

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

FIVE STAR BANK,

Plaintiff,

CASE NO. 6:24-cv-6153-FPG

v.

CIVIL ACTION

KATHERINE MOTT, ROBERT HARRIS;
KRM EVENTS, LLC; KATHERINE'S ON
MONROE, LLC; THE DIVINITY ESTATE
AND CHAPEL, LLC; KNC ELEGANCE,
LLC d/b/a THE WINTERGARDEN BY
MONROES; 11 WEXFORD GLEN, LLC;
RCC MONROES LLC; NAF REMODELING
LLC; MONROES AT RIDGEMONT LLC;
CRESCENT BEACH AT THE LAKE LLC;
and MOTT MANAGEMENT LLC;

Defendants.

**ORDER APPOINTING RECEIVER
OVER THE DEFENDANT ENTITIES**

After reviewing the record in this matter, the parties' submissions, including: the Complaint of Plaintiff Five Star Bank ("Plaintiff") (ECF No. 1); Plaintiff's Motion for the Appointment of a Receiver, the Supporting Declaration of Kevin Quinn dated March 11, 2024 and Memorandum in Support (ECF No. 3); Defendant Katherine Mott's Memorandum in Opposition dated March 22, 2024 (ECF No. 25); Defendant Robert Harris' Memorandum in Opposition dated March 22, 2024 (ECF. No. 26); and Plaintiff's Reply Memorandum of Law and Declaration of Michael Jozwiak dated March 29, 2024 (ECF No. 31); and oral argument having been heard before the Court on April 3, 2024 by Barclay Damon LLP (David G. Burch, Jr., Esq.), counsel for the Plaintiff, Rothenberg Law (David Rothenberg, Esq.), counsel for Defendant Katherine Mott, KRM Events, LLC, Katherine's on Monroe, LLC, the Divinity Estate and Chapel, LLC, KNC Elegance, LLC d/b/a The Wintergarden by Monroes LLC, NAF Remodeling LLC, Monroes at Ridgemon LLC,

Crescent Beach at the Lake LLC and Mott Management LLC (“Defendant Entities”) and Cerulli, Massare & Lembke (Matthew Lembke, Esq.), counsel for Defendant Robert Harris (“Defendant Harris”) (collectively referred to as “Defendants”), and good cause having been shown for the relief granted herein, it is;

ORDERED that, pursuant to the Court’s Decision and Order dated April 4, 2024 (Hon. Frank P. Geraci, Jr. (ECF. No. 36), Plaintiff’s motion to appoint a receiver is GRANTED; and it is further

ORDERED that Mark R. Kercher, CPA shall be appointed to serve as the Receiver for the Defendant Entities; and it is further

ORDERED that Defendants shall cooperate fully with the Receiver and shall not hinder, thwart or otherwise frustrate the Receiver’s powers and duties set forth in this Order; and it is further

ORDERED that, effective immediately, Defendants shall deliver possession and custody of all cash, assets, accounts, and any other property described herein to the Receiver; and it is further

ORDERED that the Receiver may charge \$350 per hour as a reasonable fee for his services and \$175 per hour for time spent traveling in connection with his services; and it is further

ORDERED that the reasonable costs, fees and expenses of the Receiver incurred in connection with the performance of his duties shall be paid from the assets of the Defendant Entities. All applications for costs, fees and expenses of the Receiver and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses; and it is further

ORDERED that no person or entity may file suit against the Receiver, in its capacity as

Receiver, unless otherwise authorized in advance by this Court; and it is further

ORDERED that the Receiver shall have the following powers and duties:

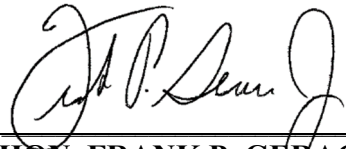
1. The Receiver shall have and retain and is hereby granted exclusive dominion and control over all of the financial affairs, including all cash, assets, books and records of the Entity Defendants.
2. The Receiver's authority hereunder shall be, and hereby is, vested in and extended to all of the Entity Defendants' real property, equitable property, tangible and intangible personal property, interest, or assets of any nature and wherever located.
3. The Receiver is hereby authorized to take possession of the Entity Defendants' existing bank or other financial accounts, including but not limited to: checking accounts, savings accounts, deposit accounts, brokerage accounts, payroll accounts, and money market accounts.
4. The Receiver is authorized to make payments and disbursements, in the ordinary course of business, as may be needed and proper for the continued operation of the Defendant Entities' businesses.
5. The Receiver is hereby authorized to perform an accounting of the Entity Defendants' finances and assets and is obligated to protect and preserve the Entity Defendants' assets and future revenue streams.
6. The Receiver is authorized to retain, employ, and pay for the services of individuals or firms selected by the Receiver in his discretion to assist in the performance of the Receiver's duties after making an application to the Court, which the Court may approve in its discretion, setting forth in reasonable detail to need for such services.
7. The Receiver is authorized to take any and all actions the Receiver, in his sole discretion, deems appropriate in order to ascertain the amount and location of the Entity

Defendants' assets.

8. The Receiver shall have the duties and responsibilities of a receiver under law, shall be answerable and account to the Court for the Receiver's activities, and shall maintain a detailed accounting of his activities, including without limitation, any and all funds collected and used for any purpose.
9. The Receiver shall not be liable for any debts or liabilities of the Entity Defendants.
10. The Receiver shall prepare and submit monthly reports of his activities to the Court and the parties.

IT IS SO ORDERED.

DATED: April 8, 2024



**HON. FRANK P. GERACI, JR.
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF NEW
YORK**

Mark R. Kercher, CPA

Contact

5090 Old Goodrich Rd
Clarence, NY 14031
(716)983-6997
Mkercher26@gmail.com

Objective

Serving and directing engagements in troubled financial settings requiring collaboration, decisiveness and project management. Working with all stakeholders in accomplishing mission, utilizing 45 years' experience in financial leadership positions.

Education

Indiana University, B.S
Accounting

Experience

*

Eastern Niagara Hospital (Debtor in Possession)

Chief Financial Officer. Engaged to oversee financial matters including Bank workout, revenue enhancement, cost controls and asset monetization. Worked closely with secured creditor and Creditor's Committee. Hospital closure was imminent in 2020, along with team maintained quality operations until closure in June of 2023.

Plan Administrator. Following closure appointed as Plan Administrator charged with all wind-down activities including asset sales, pension terminations, and required financial reporting. Managed cash flow against projections, monthly US Trustee reporting and all required regulatory filing.

Key Skills

Financial Controls and Monitoring
Project Management
Highly skilled
communicator/motivator
Problem-solving

**May 2014-June 2020*

Self Employed

Engaged in financial research and due diligence contracted by financial service providers GLG and Coleman. Largely providing financial insight to hedge fund analysts on target companies.

**February 1978-June 2013*

Ernst and Young, LLC

Partner at Ernst and Young. (*Buffalo, NY and Las Vegas, NV*) Responsible as lead audit partner serving large healthcare systems, public companies in industrial manufacturing and real estate. Later served integrated resort/casino clients throughout US and Southeast Asia.

References available upon request